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No. 99-1678

In The

# Supreme Court of the United States

RUTH REEVES, REBECCA BROWN AND TIMOTHY REEVES,

*Petitioners,*

v.

KENNETH STUMPF, ALAN STUMPF, MICHAEL V. FRIERDICH, LOUIS I. MUND, RONALD STANLEY, ARTHUR MORRIS AND RALPH JOHNSON,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## BRIEF IN OPPOSITION OF KENNETH STUMPF AND ALAN STUMPF

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## ARGUMENT

### I. REASONS FOR DENYING THE WRIT.

There is no compelling reason for this Court to review the *per curiam* ruling of the Seventh Circuit affirming the dismissal of Petitioners' lawsuit. The Petition does not raise any issues identified by the Court in Rule 10 as worthy of consideration. Further, Petitioners' claim, that the Seventh Circuit decision will "maintain" bad precedent, is without merit for the reason that **the decision of the Seventh Circuit is an unpublished Order not to be cited pursuant to Circuit Rule 53.** Finally, the decision of the Seventh Circuit was proper in all respects other than the affirmance of the trial court's denial of Respondents' Motion for Sanctions (for which no further appeal has been sought). Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

#### A. The Petition Raises no Rule 10 Issues.

Supreme Court Rule 10 lists three categories of issues worthy of the Court's consideration. The Petition filed in this cause does not attempt to frame the Questions Presented in order to raise any issues described in Rule 10, nor are any such issues present in the Seventh Circuit's *per curiam* decision. The appellate decision in this case does not conflict with the decisions of any other circuits, does not conflict with the decision of any state court of last resort and does not in any way depart from the accepted and usual course of judicial proceedings. The appellate decision was rendered by a federal court, not a state court. Further, as is evident from the failure of the appellate court to publish its decision, there were no

important federal questions involved in the decision. Finally, the Seventh Circuit's opinion comports with all relevant Supreme Court precedent. Nothing about this case suggests a level of importance sufficient to warrant the Court's attention.

Rule 10 also states that, "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." As is evident from the text of the Seventh Circuit's decision and of the Questions Presented, Petitioners' claims on appeal are merely alleged misapplications of properly stated rules of law to the "facts" as they purport them to be. Petitioners cannot argue that the four-year statute of limitations for a RICO civil action was incorrect, they can only argue that the limitation was applied incorrectly to the facts of the case as contained in the exhibits to the Amended Complaint. Thus, this is the type of case which, according to Rule 10, this Court is not interested in hearing.

**B. The Seventh Circuit's Decision is *not* Precedent.**

Each of Petitioners' arguments is urged upon this Court so that, according to Petitioners, bad case law will not be "maintained". Petitioners' Conclusion warns of the dire consequences of permitting the Seventh Circuit's decision to stand: "Clearly, the tolling rules under RICO will become meaningless and there will remain doubt as to the applicable accrual rule." **These arguments are meritless. The decision of the Seventh Circuit is an unpublished Order not to be cited pursuant to Circuit**

**Rule 53.**[1] Assuming, *arguendo*, that the Seventh Circuit's decision was erroneous, there is no way the decision can affect the outcome of any other case since it may not be used as precedent under Circuit Rule. Further appellate review will have an effect on only one case: Petitioners'. This case is not like some cases where the outcome affects thousands or millions of persons.

### C. The Seventh Circuit's Decision was Correct.

The Seventh Circuit's decision requires no review for the reason that it is well-reasoned and the conclusions therein conform to the law in all respects. The trial court and the appellate court correctly identified insurmountable problems relating to limitations and standing issues in the Amended Complaint: **"The documents attached to [the Amended Complaint] make clear that [Plaintiff] should have known of any alleged injury more than four years before she filed suit."** *Reeves v. Frierdich*, Nos. 99-1201 & 99-1301, slip op. at 9 (7th Cir. 2000).

Petitioners had two chances to state their claims and gave the trial court no justification for a third opportunity. This lawsuit was just one in a series of frivolous suits brought by these plaintiffs. The litigation started in 1994 with a malpractice action against Respondent Michael Frierdich that Petitioner Ruth Reeves voluntarily dismissed in 1997 when summary judgment was looming. The litigation continued with this case and then with

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[1] Curiously, this notation, found on page one of the Seventh Circuit's Order and Judgment, is absent from page one of the Order and Judgment reproduced in Petitioners' Appendix.

frivolous claims filed by Petitioners in a state court action involving Respondent Kenneth Stumpf and others. Petitioners should be given no further federal opportunity to cause unnecessary expense and aggravation to Respondents, and the Petition for Writ of Certiorari should be denied.

## II. MISSTATEMENTS OF FACT.

Supreme Court Rule 15 obligates Respondents to address any misstatements of fact contained within the Petition for Writ of Certiorari. In this case, the Petition is replete with misstatements of "fact".

### A. Petitioners' "Facts" are One-Sided.

The record on appeal is devoid of the usual "facts" for the reason that this cause was dismissed prior to the filing of answers by any of the defendants. The decisions of the trial and appellate courts were based on the unanswered allegations in the Amended Complaint and the 127 pages of exhibits attached thereto. While the Complaint and Amended Complaint were successfully attacked for their failure to state recognizable and non-time-barred claims, Defendants wish to assure the Court that the failure of Respondents to attack the Complaint and Amended Complaint on the merits was entirely the result of having obtained relief at the pleading stage and not because such a defense on the merits would not have succeeded. On the contrary, it is Respondents' position that virtually all of the allegations in the Complaint and the Amended Complaint were products of a vivid imagination and a failure to take into account indisputable

evidence that Respondents were innocent of the charges leveled against them.

### B. Statements Outside of the Record.

Despite the advantage of limiting the "facts" to the unanswered allegations contained in the Amended Complaint and the 127 pages of exhibits attached thereto, Petitioners seem compelled to **add** to those "facts" with each additional pleading filed. Their Petition for Writ of Certiorari is no exception. The following is a list of some of the more egregious misstatements in the Petition:

**Page 3**

Petitioners allege that S & S Land Trust bought real estate in 1981 from Michael Frierdich that was owned by Petitioner Ruth Reeves. **This is not true.** The property Petitioners sought to recover in Counts I, II and III was purchased from the Illinois State Trust Company as stated in Exhibit 7 to the Amended Complaint.

Petitioners allege that Respondent Alan Stumpf is a former attorney for Petitioner Ruth Reeves. **This is not true.** The Amended Complaint alleges that Mr. Stumpf was "perceived" by Reeves to be her attorney. None of the exhibits confirm this and they show that he actually represented Respondent Kenneth Stumpf in some of his dealings with Reeves.

Petitioners allege that Frierdich assigned a mortgage note from Reeves to a bank for $200,000 when more than $900,000 was owed. Petitioners then allege forgeries of several related documents on pages 3 and 4. **None of this is alleged in the Amended Complaint nor is it found in**

**the exhibits thereto.** Through these allegations, Petitioners are attempting to prejudice the Court with the slanderous allegations from a different lawsuit that are not part of the record for this appeal and should be stricken.

**Page 4.**[2]

Petitioners allege that Respondent Kenneth Stumpf can only prove $316,000 in payments for property purchased for $1.6 million. **This is both false and outside of the record for this attempted appeal.** Neither in this cause nor in any other lawsuit has Mr. Stumpf undertaken to present proof of full payment for the property in question. The affidavit to which Petitioners refer contained copies of checks merely by way of example and not as a full showing of all of the proof available to disprove Petitioners' frivolous claims. But this is all irrelevant to this attempted appeal because these matters are not included in the Amended Complaint and the 127 pages of exhibits attached thereto.

Petitioners refer to an affidavit of Petitioner Ruth Reeves wherein she swears she never received millions of dollars in checks made out to her. **This affidavit is from a different lawsuit and is not part of the record for this attempted appeal.**

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[2] Respondents Kenneth Stumpf and Alan Stumpf do not address the allegations on pages 4 and 5 relating to Counts IV, V and VI for the reason that said Respondents are not named in those counts.

**Page 5.**

Petitioners allege that Frierdich arranged the sale of a commercial shopping center to Petitioner Ruth Reeves and then sold it to himself several years later. **This is not true.** The Amended Complaint does not allege that a shopping center was sold, but that real estate was sold. The shopping center wasn't built until well after the alleged transaction and was merely farm ground at the time of the alleged transaction. Further, the exhibits to the Amended Complaint only show an executory contract for the purchase of real estate. **Neither the Amended Complaint nor the exhibits attached thereto allege or show that Reeves ever performed under the contract or held title to the property she now alleges was stolen from her.**

**Page 7.**

The entire first paragraph of the "Procedural History" section relates to a different lawsuit and is not part of the allegations found in the Amended Complaint and the 127 pages of exhibits attached thereto, and thus, is not part of the record for this attempted appeal.

Most of the second paragraph of the "Procedural History" section relates to a different lawsuit and is not part of the allegations found in the Amended Complaint and the 127 pages of exhibits attached thereto, and thus, is not part of the record for this attempted appeal.

**Pages 13-14.**

Petitioners argue that the Seventh Circuit erred in assuming that Petitioner Ruth Reeves saw the 1987 CPA letter (Exhibit 3) by which she was found to have been

put on notice of alleged RICO injuries, and they allege that she did not, in fact, see the letter. **This is absurd.** Counts I, II and III of the Amended Complaint are based on a purported contract with Reeves, and Petitioners attached Exhibit 3 to the Amended Complaint as the only writing they had evidencing the purported contract that Reeves claims to have entered into. **How could they base their contractual claim on the letter in the trial court and now allege to this Court that they had no knowledge of the same letter or the information contained therein?** Such an allegation represents a misstatement designed to create an "exceptional factual error" on the part of the Seventh Circuit where there was none made.

**Page 15.**

Petitioners allege that the Seventh Circuit has "dismissed" predicate acts occurring within four years of the filing of the lawsuit. **This is not true.** Neither the trial court nor the appellate court "dismissed" any "predicates". What has been properly dismissed are causes of action alleging injuries that all occurred five to twenty years prior to the filing of the lawsuit.

**Page 19.**

Petitioners allege that Reeves held title to Westpark Center by warranty deed. **This is not true.** Exhibit 27 to the Amended Complaint was merely an executory Agreement for Warranty Deed. **Neither the Amended Complaint nor the exhibits attached thereto allege or show that Reeves ever performed under the contract or held title to the property that she now alleges was stolen from her.**

**Page 22.**

Petitioners allege that the trial court made no determination with respect to their allegations of fraudulent concealment, equitable estoppel, equitable tolling and due diligence. **This is not true.** The trial court explicitly considered and rejected these claims on pages 10 and 11 of the Amended Memorandum and Order dated January 7, 1999, stating:

> The Exhibits to plaintiff's complaint demonstrate that any attempt by defendants to conceal the allegedly fraudulent transactions failed more than four years before plaintiff filed this RICO case. Plaintiff has not alleged any action by defendants which would have prevented her from suing in time. Accordingly, plaintiff was not reasonably diligent in pursuing her claims and cannot rely on the doctrine of fraudulent concealment nor the doctrine of equitable tolling.

## CONCLUSION

A discussion of the relevant law and the application of that law to the facts of this case is not called for at this time, and no attempt has been made to do so. This Brief is intended to address misstatements and to point out why a writ of certiorari should not be granted.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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